

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 BRANCH BANKING AND TRUST
COMPANY,

5 Plaintiff,

6 v.

7 SMOKE RANCH DEVELOPMENT, LLC, *et*
8 *al.*,

9 Defendants.
10

Case No. 2:12-cv-00453-APG-NJK

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR NON-TAXABLE
COSTS**

(ECF No. 203)

11 Plaintiff Branch Banking and Trust Company previously moved for an award of
12 attorney's fees and non-taxable costs incurred in connection with this matter. I denied BB&T's
13 request for non-taxable costs because it was unclear what costs BB&T was seeking as non-
14 taxable costs. However, I granted BB&T leave to file a new motion for non-taxable costs.

15 BB&T renews its motion for non-taxable costs in the amount of \$11,399.12 and attaches
16 in support a declaration and a spreadsheet purporting to show costs incurred in this action. The
17 defendants oppose, arguing that the description of certain costs is inadequate to determine what
18 the cost was, whether it was related to this litigation, and whether it was reasonable. Specifically,
19 the defendants object to the following items as not sufficiently described: (1) cost items for
20 "Deposition of Haskel Iny"; (2) cost items for "Deposition of Ron Fuqua"; (3) cost items for
21 "Deposition of Teresa Griswold and Charles Jack"; (4) "Hearing re MSJ"; and (5) Westlaw
22 research. The defendants also object to paying for travel expenses for the plaintiff's counsel to
23 attend hearings in Las Vegas because they contend plaintiff's counsel's firm has competent
24 attorneys in Las Vegas who could have handled the matters without incurring those expenses.
25 Finally, the defendants object to two entries related to BB&T's appraiser.

26 BB&T responds that the agreements between the parties do not condition the recovery of
27 fees on reasonableness. BB&T also argues the travel expenses were reasonably incurred because
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1 counsel had expertise in the relevant areas of law. As to the expert costs, BB&T argues the costs
2 were reasonably incurred in preparing the expert for deposition and trial.

3 **I. LEGAL STANDARD**

4 Non-taxable costs are recoverable on a motion to the court under Rule 54(d)(2). Fed. R.
5 Civ. Proc. 54(d)(2); *see also* LR 54-16(b)(2) (a motion for attorney’s fees must include “[a]n
6 itemization of all costs sought to be charged as part of the fee award and not otherwise taxable
7 pursuant to LR 54-1 through 54-15”). An award of costs involves a two-step inquiry. I must first
8 determine who is a “prevailing party” under Rule 54, and then I must determine “how much (if
9 any) costs should be awarded to the prevailing party.” *Shum v. Intel Corp.*, 629 F.3d 1360, 1366
10 (Fed. Cir. 2010); *Ass’n of Mex.-Am. Educators v. Cal.*, 231 F.3d 572, 593 (9th Cir. 2000) (noting
11 that district courts have discretion in choosing to award costs under Rule 54(d)). There is a
12 presumption in favor of awarding costs to the prevailing party. *Dawson v. City of Seattle*, 435
13 F.3d 1054, 1070 (9th Cir. 2006). To overcome this presumption, the losing party must establish a
14 reason to deny costs. *Id.*

15 As stated in my prior order, BB&T is a prevailing party who is entitled to recover some
16 non-taxable costs under the loan documents. ECF No. 199. Thus, the only question is what
17 amount, if any, BB&T should be awarded.

18 **A. Deposition of Haskel Iny**

19 The spreadsheet identifies various costs items that are described only as “Deposition of
20 Haskel Iny.” ECF No. 199-1 at 5. These items are not sufficiently described for me to determine
21 whether the costs incurred were reasonable. BB&T contends it need not show its costs were
22 reasonable because the loan documents do not limit recovery to reasonable costs. However,
23 every contract has an implied covenant of good faith and fair dealing. *See Ins. Co. of the W. v.*
24 *Gibson Tile Co.*, 134 P.3d 698, 702 (Nev. 2006). Consequently, BB&T cannot seek unreasonable
25 or unrelated costs. Because BB&T has not adequately described these requested costs, I deny
26 them.

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1 **II. CONCLUSION**

2 IT IS THEREFORE ORDERED that plaintiff Branch Banking and Trust Company's
3 renewed motion for non-taxable costs (**ECF No. 203**) is **GRANTED in part and DENIED in**
4 **part**. BB&T is awarded **\$9,496.98** in non-taxable costs. The clerk of court is instructed to
5 amend the Judgment (ECF No. 200) accordingly.

6 DATED this 28th day of April, 2017.

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9 ANDREW P. GORDON
10 UNITED STATES DISTRICT JUDGE
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